

STATE OF MICHIGAN
COURT OF APPEALS

CARLA MIA DONALD,

Plaintiff-Appellant,

v

WILLIAM SPURGEON DONALD,

Defendant-Appellee.

UNPUBLISHED
November 6, 2003

No. 244782
Genesee Circuit Court
LC No. 00-220629-DM

Before: Murphy, P.J., and Cooper and C. L. Levin*, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court court's order changing custody of the parties' minor child from plaintiff to defendant. We affirm.

In *Foskett v Foskett*, 247 Mich App 1, 4-5; 634 NW2d 363 (2001), this Court set forth the proper standard of review in child custody cases:

There are three different standards of review applicable to child custody cases. The clear legal error standard applies where the trial court errs in its choice, interpretation, or application of the existing law. *LaFleche v Ybarra*, 242 Mich App 692, 695; 619 NW2d 738 (2000). Findings of fact are reviewed pursuant to the great weight of the evidence standard. In accord with that standard, this Court will sustain the trial court's factual findings unless "the evidence clearly preponderates in the opposite direction." *Id.* Discretionary rulings are reviewed for an abuse of discretion, including a trial court's determination on the issue of custody. *Id.*

"Because the existence of a custodial environment is a factual inquiry, the great weight of the evidence standard applies." *Id.* at 8.

"MCL 722.27(1)(c) provides for modification of a custody order on 'proper cause shown' or '[a] change of circumstances.'" *Foskett, supra* at 5 (alteration in original). In *Rossow v Aranda*, 206 Mich App 456, 457; 522 NW2d 874 (1994), this Court indicated that the initial burden of establishing proper cause or a change of circumstances must be satisfied before the

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

trial court is permitted to engage in an analysis of the best interest factors. The *Rossow* panel stated the following:

The plain and ordinary language used in MCL 722.27(1)(c); MSA 25.312(7)(1)(c) evinces the Legislature's intent to condition a trial court's reconsideration of the statutory best interest factors on a determination by the court that the party seeking the change has demonstrated either a proper cause shown or a change of circumstances. It therefore follows as a corollary that where the party seeking to change custody has not carried the initial burden of establishing either proper cause or a change of circumstances, the trial court is not authorized by statute to revisit an otherwise valid prior custody decision and engage in a reconsideration of the statutory best interest factors. [*Rossow*, *supra* at 458.]

Plaintiff first argues that there was not a change of circumstances to justify a change of custody. Plaintiff also contends that defendant did not demonstrate proper cause through his allegations that the minor child had special needs with regard to his education that required attention. Although the trial court did not make a specific finding regarding whether there was proper cause shown or a change in circumstances, plaintiff's argument does not assert that the trial court erred in failing to find that a change in circumstances or proper cause existed before revisiting the best interest factors. However, because we believe this argument is encompassed in plaintiff's issue, the trial court's findings must be reviewed in order to determine whether the trial court, in essence, found a change of circumstances or proper cause shown, and if so, whether it was in error.

In defendant's motion to change custody, defendant argued that the minor child had special needs and required special schooling in Genesee Intermediate School District ("GISD"), and that plaintiff refused to attend to the child's special needs by refusing to enroll him in special programs. Defendant also indicated that plaintiff had made threatening and harassing calls to defendant, and that plaintiff put her needs before those of the child. Finally, defendant contended that plaintiff did not provide a stable environment for the child. Prior to making its determination on the twelve best interest factors, the trial court referenced defendant's motion to change custody with respect to plaintiff's failure to meet the child's special needs and that there were communication issues between the parties, and it further indicated defendant's belief that custody should change based on those issues. The trial court then discussed the testimony of the witnesses from the evidentiary hearing, and indicated that the evidence and exhibits presented at the evidentiary hearing focused primarily on the child's immediate needs. The trial court then determined that there were communication issues between the parties, and referenced licensed psychologist, Victoria Cox's, evaluations of plaintiff, defendant, and the child. The trial court next summarized Cox's testimony regarding her evaluation of plaintiff, defendant, and the child, and focused on Cox's testimony regarding plaintiff's inability to meet the child's special needs, on the plaintiff's inability to be an effective parent. Finally, the trial court indicated that each of the parties expressed their frustration with the other party and with each other's working and living arrangements.

Although the trial court's findings are somewhat unspecific, we conclude that the trial court's findings convey its concern that the child's special needs were not being met and that the parties were having extreme difficulty in communicating with each other regarding the child. In

child custody proceedings, the trial court is not required to “comment upon every matter in evidence or declare acceptance or rejection of every proposition argued.” *Baker v Baker*, 411 Mich 567, 583; 309 NW2d 532 (1981). Accordingly, the trial court’s findings were sufficient to demonstrate that the court was making a determination that proper cause was shown or that there had been a change in circumstances.

Similarly, we find that defendant met the requirements necessary to revisit the twelve best interest factors regarding custody, by showing proper cause and a change of circumstances. Defendant established proper cause by demonstrating that the child had special needs regarding his schooling that required attention, and on the parties’ inability to communicate together with respect to their son. See *Rossow*, *supra* at 458. Accordingly, it was proper for the trial court to perform an analysis regarding the twelve best interest factors.

Plaintiff next argues that the trial court erred in failing to find the existence or non-existence of a custodial environment, and in basing its decision on a preponderance of the evidence rather than on clear and convincing evidence. When confronted with a petition to change custody, a trial court must determine the appropriate burden of proof to place on the party seeking the change. *Foskett*, *supra* at 5. In ascertaining the proper burden, the trial court must first determine whether “an established custodial environment exists.” *Id.* In reference to the determination of whether an established custodial environment exists, MCL 722.27(1)(c) provides, in relevant part:

The court shall not modify or amend its previous judgments or orders or issue a new order so as to change the established custodial environment of a child unless there is presented clear and convincing evidence that it is in the best interest of the child. The custodial environment of a child is established if over an appreciable time the child naturally looks to the custodian in that environment for guidance, discipline, the necessities of life, and parental comfort. The age of the child, the physical environment, and the inclination of the custodian and the child as to the permanency of the relationship shall also be considered.

The *Foskett* Court noted the Legislature’s intent underlying the Child Custody Act was to ““minimize the prospect of unwarranted and disruptive change of custody orders and to erect a barrier against removal of a child from an “established custodial environment,” *except in the most compelling cases*,” in indicating that the determination of whether a custodial environment has been established is an intense factual inquiry. *Foskett*, *supra* at 6 (citations omitted).

“If the trial court finds that an established custodial environment exists, then the trial court can change custody only if the party bearing the burden presents clear and convincing evidence that the change serves the best interests of the child.” *Foskett*, *supra* at 6. “On the contrary, if the court finds that no established custodial environment exists, then the court may change custody if the party bearing the burden proves by a preponderance of the evidence that the change serves the child’s best interests.” *Id.* at 6-7.

A reading of the trial court’s findings of fact and conclusions of law demonstrates that the trial court made its findings in accordance with the clear and convincing evidence standard, which is utilized when there is an established custodial environment. The Court stated:

The first analysis the Court has to make is whether there was an established custodial environment, and if the Court finds that to be true, then the Court should not order a change of custody absent a showing of clear and convincing evidence. And that's set forth in the statute related to the custody factors, and that's MCL 722.27(1)(c).

* * *

Now, to bottom line it, from the testimony presented and the evidence and so forth, this Court is satisfied that clear and convincing evidence has been presented that Father should be granted legal and physical custody of the minor child.

Plaintiff's argument focuses on whether there was an established custodial environment that would require the trial court to apply the clear and convincing standard. We find that, contrary to plaintiff's argument, the trial court actually determined that there was an established custodial environment with plaintiff because it applied the clear and convincing evidence standard to its findings.¹ As plaintiff bases her argument on the failure to apply the clear and convincing standard, we conclude that plaintiff has failed to demonstrate any error in that the trial court clearly utilized the clear and convincing evidence standard plaintiff requested.

"To determine the best interests of the children in child custody cases, a trial court must consider all the factors delineated in MCL 722.23(a)-(l) applying the proper burden of proof." *Foskett, supra* at 9. "A trial court must consider and explicitly state its findings and conclusions with respect to each of the factors." *Id.* This Court will sustain the trial court's factual findings unless "the evidence clearly preponderates in the opposite direction." *Id.* at 5. As previously stated, because an established custodial environment existed, defendant was required to prove by clear and convincing evidence that a change in the custody order was in the child's best interests.

Plaintiff contends that the trial court's findings were against the great weight of the evidence. Specifically, plaintiff argues that the great weight of the evidence demonstrated that plaintiff was meeting the child's needs, including his educational needs. Plaintiff further argues that Cox's testimony was improperly based on the parties' intelligence levels, and that "the fact" that Cox chose to ignore plaintiff's allegations that defendant was controlling and abusive demonstrated that Cox lacked a depth of understanding in her stated field of expertise. Finally, plaintiff argues that the trial court improperly focused on Cox's testimony and on the child's immediate needs.

Plaintiff does not make any specific arguments regarding any of the twelve best interest factors. Rather, plaintiff's argument focuses on the credibility of the witnesses at the evidentiary hearing, and specifically centers on the weight given to Cox's testimony. This Court will defer to the trial court's ability to assess the credibility of witnesses at the evidentiary hearing.

¹ It is evident from the record that the parties and the court were operating on the assumption, which does not appear subject to dispute, that there was an established custodial environment with plaintiff.

Fletcher v Fletcher, 229 Mich App 19, 29; 581 NW2d 11 (1998). Although plaintiff may disagree with Cox's assessment, such disagreement does not make the trial court's findings against the great weight of the evidence.

Plaintiff also argues that the trial court abused its discretion in determining that the analysis of the twelve best interest factors supported a change of custody from plaintiff to defendant. We note that plaintiff has failed to provide supporting authority in connection with her specific allegations of error, and has provided minimal citation to the record regarding this issue. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Additionally, we find no abuse of discretion in the trial court's determination on the issue of custody.

Plaintiff also argues that she was denied a fair trial because she was prevented from presenting evidence of defendant's history of abuse and control against plaintiff. We disagree. This Court reviews preserved evidentiary issues for an abuse of the trial court's discretion. *Hilgendorf v St John Hosp & Medical Ctr Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001). "An abuse of discretion is found only in extreme cases in which the result is so palpably and grossly violative of fact and logic that it evidences perversity of will, a defiance of judgment, or the exercise of passion or bias." *Barrett v Kirtland Community College*, 245 Mich App 306, 325; 628 NW2d 63 (2001).

We find that plaintiff has failed to specifically identify, in this issue, which evidence she was precluded from presenting. "A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *Morris v Allstate Ins Co*, 230 Mich App 361, 370; 584 NW2d 340 (1998). Because plaintiff has provided an insufficient background regarding this issue, it is impossible to detect from plaintiff's brief exactly what evidence she claims the trial court erred in excluding. Regardless, we find no abuse of discretion in limiting any evidence for the reasons provided by the trial court.

Affirmed.

/s/ William B. Murphy
/s/ Jessica R. Cooper